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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1948

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## No. 449

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BORG-WARNER CORPORATION and DAVID R. GAMBLE,
*Petitioners,*

vs.

GEORGE I. GOODWIN,
*Respondent.*

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## PETITIONERS' REPLY BRIEF

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## PETITIONERS' REPLY BRIEF

Respondent, in his brief in opposition to the petition, instead of meeting squarely the propositions advanced in the petition and supporting brief, attempts to avoid them by enumerating the adverse rulings which petitioners have encountered in their efforts to obtain a decision on the merits of their contentions, by misrepresenting the history of the case and petitioners' motives, and by glossing over respondent's shortcomings.

Respondent's repeated statements to the contrary notwithstanding, the "grounds" of the petition now before the Court are not identical with those of the previous

petitions. When the previous petitions were presented no final judgment had been entered and petitioners had not exhausted their remedy below. These and other distinctions apparent in the petition and supporting brief are believed to warrant consideration of the case anew by the Court.

Respondent's brief, while it contains implications to the contrary which are without support in the record, leaves unimpaired the statement of facts set forth in petitioners' brief and these propositions:

> When the Court of Appeals, on respondent's (the first) appeal reversed the first judgment of the District Court and pronounced the *entire patent* valid notwithstanding that appeal and its review were restricted as to the question of validity to 9 specified claims, it not only exceeded its jurisdiction but deprived petitioners of their right under the Declaratory Judgment Act, as litigants and accused infringers of the patent, to have an adjudication as to the validity of the other 14 claims adjudged invalid in an unappealed part of that judgment.
>
> When respondent limited his (the first) appeal to a review of but one distinct and separable part of the first judgment of the District Court and thereunder sought a review only in respect to the question of validity of 9 specified claims of the Daukus patent, under the *Triplett* case he became charged with the duty promptly to enter a disclaimer of the other 14 claims of that patent adjudged invalid in the unappealed part of that judgment.
>
> When respondent failed to enter such a disclaimer the entire patent became invalid and the jurisdiction of the court failed.
>
> The disclaimer and jurisdictional questions were

appropriately presented in both the Court of Appeals and the District Court but neither Court made any findings of fact or conclusions of law or rendered any opinion pertaining thereto. Thus petitioners have been denied their right to an adjudication on the merits of those questions.

For the reasons stated in their petition and supporting brief, and especially because the Court of Appeals appears to have been unduly influenced by this Court's denial of the previous petitions, issuance of the writ is requested.

Respectfully submitted,

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